

**WESTFIELD-WASHINGTON
ADVISORY PLAN COMMISSION**

Petition Number 0801-ZOA-02
Zoning Ordinance Section WC 16.04.170
Title Special Exceptions Criteria
Request(s) Amendment to the Board of Zoning Appeals ordinance of the Westfield-Washington Township Zoning Ordinance to establish criteria for the grant of Special Exceptions per the State of Indiana Code 36-7-4-918.2.

Exhibits

- 1) Staff Report, WCD, 01/28/08
- 2) Proposed Text Amendment, WCD, 01/28/08

SUMMARY

During the revision to the Board of Zoning Appeals (BZA) Rules of Procedure, it came to staff's attention that the Westfield-Washington Township Board of Zoning Appeals Ordinance did not directly meet the requirements of the State of Indiana Code 36-7-918.2. The code states that the criteria for a Special Exception must be defined in the local municipality's zoning ordinance.

The proposed amendment does not include global changes to the Board of Zoning Appeals Ordinance. The amendment is the addition of the Special Exception standards previously established by the Board of Zoning Appeals. Since this is a requirement of State Code and the standards for the Special Exception have been previously established, this amendment was not taken before the Standards Committee for review.

ANALYSIS

The proposed change to the ordinance is in [blue underline](#). The language was taken directly from the previously established standards and no changes were made.

PROCEDURAL

- Notice of this amendment was published in newspapers of general circulation in accordance with applicable State statutes.
- The January 28, 2008 hearing before the Advisory Plan Commission represents the first public hearing for this proposed amendment.
- Copies of the proposed text amendment have been made available to the public in advance of the published hearing date.
- This matter requires a Public Hearing.
- The Advisory Plan Commission issues a recommendation to the Westfield City Council in regard to proposed changes in zoning.
- The Advisory Plan Commission has the option of issuing a recommendation on this request, forwarding this request to appear before a workshop meeting of the

APC, tentatively scheduled for February 4, 2008 for further consideration if deemed necessary, or requesting this petition be continued to a later meeting of the APC.

RECOMMENDATION

Staff recommends approval of the amendment as presented and to forward the amendment to the City Council on February 11, 2008 for consideration.

JMM

WC 16.04.170 Board of Zoning Appeals

A Board of Zoning Appeals is hereby established with membership and appointment provided in accordance with the procedures of IC 36-7-4 and all acts now or hereafter amendatory thereto.

- A. At the first meeting of each year, the Board shall elect a chairman and a vice-chairman from among its members.
- B. The Board shall adopt rules and regulations as it may deem necessary to effectuate the provisions of this ordinance.
- C. All meetings of the Board shall be open to the public. The board shall keep minutes of its proceedings, keep records of its examinations and other official actions, prepare findings, and record the vote of each member voting upon each question. All minutes and records shall be filed in the office of the Board and shall be a public record.
- D. Any decision of the Building Commissioner in enforcement of this Ordinance may be appealed to the Board by any person claiming to be adversely affected by such decision.
- E. The board shall have the following powers and it shall be its duty to:
 - 1. Hear and determine appeals from and review any order, requirement, decision or determination made by the Building Commissioner in the enforcement of this Ordinance.
 - 2. Permit or deny special exceptions, special or contingent uses, or conditional uses from the requirements of the Zoning Ordinance. The Board may impose reasonable conditions as a part of its approval.
 - 3. Approve variances that:
 - a) Will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - c) The need for the variance arises from some condition particular to the property involved;
 - d) The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and

- e) Does not interfere substantially with the comprehensive plan.
- F. In exercising its powers, the Board may reverse or affirm wholly or partly, or may modify the order, requirements, decisions or determination appealed from as in its opinion ought to be done in the premises, and to that end shall have all the powers of the Building Commissioner and Planner from whom the appeal is taken.
- G. Every decision of the Board shall be subject to review by certiorari.
- H. The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk or area) of the Zoning Ordinance. A variance may be approved under this section only upon a determination that:
 - 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - 3. The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.
- I. Any request not approved by the Board of Zoning Appeals may be resubmitted after 12 months from the date of the Board of Zoning Appeals action.
- J. The board shall be governed by the provisions of WC 16.04.080 concerning variances applicable to the flood plain district.
- K. The criteria for special exceptions are listed below. The Board of Zoning Appeals shall have the authority to grant lesser variance than requested upon finding justice shall be served, or may require conditions to mitigate the impact of any special exception.
 - 1. The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health safety morals or general welfare.
 - 2. The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood.
 - 3. The establishment of the special exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
 - 4. Adequate utilities, streets drainage and other necessary facilities have been or are being improved.

5. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion.
6. The special exception will be located in a district where such use is permitted and that all other requirements set forth, applicable to such special exception, will be met.